

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JULY 2, 2015

AMENDED IN ASSEMBLY APRIL 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 610**

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**Introduced by Assembly Member Jones-Sawyer  
(Coauthors: Assembly Members Brown and Cristina Garcia)**

February 24, 2015

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An act to repeal and add Section 4007.5 of the Family Code, relating to child support, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 610, as amended, Jones-Sawyer. Child support: suspension of support order.

~~Existing law,~~

~~Prior law required, until July 1, 2015, provides that the obligation of a person to pay child support pursuant to an order that is being enforced by a local child support agency under Title IV-D of the Social Security Act is to be suspended for the period of time exceeding 90 days in which the person required to pay support is incarcerated or involuntarily institutionalized, with specified exceptions. Existing law requires~~ *Prior law required* that, upon the release of the obligor, the obligation to pay child support immediately ~~resumes~~ *resume* in the amount otherwise specified in the child support order prior to the suspension of that obligation. ~~Existing law requires~~ *Prior law required* the court to provide notice to the parties of the support obligation suspension at the time the order ~~is~~ *was* issued or modified. ~~Existing law~~

~~authorizes~~ *Prior law authorized* an obligor, upon release from incarceration or involuntary institutionalization, to petition the court for an adjustment of the arrears pursuant to the suspension of the support obligation.

This bill would ~~instead specify that~~ *enact similar provisions to require* the suspension of ~~the a~~ child support order ~~occurs to occur~~ by operation of ~~law~~. *law when an obligor is incarcerated or voluntarily institutionalized, unless the obligor has the means to pay support, or the obligor was incarcerated or involuntarily institutionalized for either an offense constituting domestic violence or the failure to pay child support.* The bill, ~~until January 1, 2020,~~ would also authorize the local child support agency to administratively adjust account balances for cases managed by the agency if the agency verifies that arrears and interest were accrued in violation of these provisions, that specified conditions relating to the obligor's inability to pay while incarcerated and the underlying offense for which he or she was incarcerated do not exist, and neither the obligor nor the obligee object to the adjustment. The bill would require the local child support agency to give notice, as prescribed, of the adjustment to the obligor and obligee. If either the obligor or the obligee objects to the adjustment, the bill would require the agency to file a motion with the court to adjust the arrears and would allow the adjustment only after approval by the court. The bill would require the child support obligation to resume on the first day of the first full month after the release of the person owing support. ~~Commencing January 1, 2020, an obligor, upon release from incarceration or involuntary institutionalization, would be authorized to petition the court for an adjustment of the arrears pursuant to the suspension of the support obligation.~~ The bill would require the Department of Child Support Services, in consultation with the Judicial Council, to develop forms to implement these provisions, and would require them to report specified information relating to these provisions to the Assembly Judiciary Committee and the Senate Judiciary Committee on or before January 1, 2019. *The bill would make these provisions operative only until January 1, 2020.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 4007.5 of the Family Code is repealed.

2     SEC. 2. Section 4007.5 is added to the Family Code, to read:

3     4007.5. (a) Every money judgment or order for support of a  
4 child shall be suspended, by operation of law, for any period  
5 exceeding 90 consecutive days in which the person ordered to pay  
6 support is incarcerated or involuntarily institutionalized, unless  
7 either of the following conditions exist:

8     (1) The person owing support has the means to pay support  
9 while incarcerated or involuntarily institutionalized.

10    (2) The person owing support was incarcerated or involuntarily  
11 institutionalized for an offense constituting domestic violence, as  
12 defined in Section 6211, against the supported party or supported  
13 child, or for an offense that could be enjoined by a protective order  
14 pursuant to Section 6320, or as a result of his or her failure to  
15 comply with a court order to pay child support.

16    (b) The child support obligation shall resume on the first day  
17 of the first full month after the release of the person owing support  
18 in the amount previously ordered, and that amount is presumed to  
19 be appropriate under federal and state law. This section does not  
20 preclude a person owing support from seeking a modification of  
21 the child support order pursuant to Section 3651, based on a change  
22 in circumstances or other appropriate reason.

23    (c) (1) A local child support agency enforcing a child support  
24 order under Title IV-D of the Social Security Act (42 U.S.C. Sec.  
25 651 et seq.) may, upon written notice of the proposed adjustment  
26 to the support obligor and obligee along with a blank form provided  
27 for the support obligor or obligee to object to the administrative  
28 adjustment to the local child support agency, administratively  
29 adjust account balances for cases managed by the agency if all of  
30 the following occurs:

31    (A) The agency verifies that arrears and interest were accrued  
32 in violation of this section.

33    (B) The agency verifies that neither of the conditions set forth  
34 in paragraph (1) or (2) of subdivision (a) exist.

35    (C) Neither the support obligor nor obligee objects, within 30  
36 days of receipt of the notice of proposed adjustment, whether in  
37 writing or by telephone, to the administrative adjustment by the  
38 local child support agency.

1 (2) If either the support obligor or obligee objects to the  
2 administrative adjustment set forth in this subdivision, the agency  
3 shall not adjust the order, but shall file a motion with the court to  
4 seek to adjust the arrears and shall serve copies of the motion on  
5 the parties, who may file an objection to the agency's motion with  
6 the court. The obligor's arrears shall not be adjusted unless the  
7 court approves the adjustment.

8 (3) The agency may perform this adjustment without regard to  
9 whether it was enforcing the child support order at the time the  
10 parent owing support qualified for relief under this section.

11 (d) This section does not prohibit the local child support agency  
12 or a party from petitioning a court for a determination of child  
13 support or arrears amounts.

14 (e) For purposes of this section, the following definitions shall  
15 apply:

16 (1) "Incarcerated or involuntarily institutionalized" includes,  
17 but is not limited to, involuntary confinement to the state prison,  
18 a county jail, a juvenile facility operated by the Division of Juvenile  
19 Facilities in the Department of Corrections and Rehabilitation, or  
20 a mental health facility.

21 (2) "Suspend" means that the payment due on the current child  
22 support order and any arrears payment, or interest resulting from  
23 these amounts, is, by operation of law, set to zero dollars (\$0) for  
24 the period in which the person owing support is incarcerated or  
25 involuntarily institutionalized.

26 (f) This section applies as follows:

27 (1) To every money judgment of child support order issued or  
28 modified on or after the enactment of this section.

29 (2) If a local child support agency is enforcing a child support  
30 order under Title IV-D of the Social Security Act (42 U.S.C. Sec.  
31 651 et seq.), this section shall apply to an order or modification  
32 issued on or after July 1, 2011.

33 (g) The Department of Child Support Services shall, by January  
34 1, 2016, and in consultation with the Judicial Council, develop  
35 forms to implement this section.

36 (h) On or before January 1, 2019, the Department of Child  
37 Support Services and the Judicial Council shall conduct an  
38 evaluation of the effectiveness of the administrative adjustment  
39 process authorized by this section and shall report the results of  
40 the review, as well as any recommended changes, to the Assembly

Judiciary Committee and the Senate Judiciary Committee. The evaluation shall include a review of the ease of the process to both the obligor and obligee, as well as an analysis of the number of cases administratively adjusted, the number of cases adjusted in court, and the number of cases not adjusted.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

~~SEC. 3. Section 4007.5 is added to the Family Code, to read:~~

~~4007.5. (a) Every money judgment or order for support of a child shall be suspended, by operation of law, for any period exceeding 90 consecutive days in which the person ordered to pay support is incarcerated or involuntarily institutionalized, unless either of the following conditions exist:~~

~~(1) The person owing support has the means to pay support while incarcerated or involuntarily institutionalized.~~

~~(2) The person owing support was incarcerated or involuntarily institutionalized for an offense constituting domestic violence, as defined in Section 6211, against the supported party or supported child, or for an offense that could be enjoined by a protective order pursuant to Section 6320, or as a result of his or her failure to comply with a court order to pay child support.~~

~~(b) The child support obligation shall resume on the first day of the first full month after the release of the person owing support in the amount previously ordered, and that amount is presumed to be appropriate under federal and state law. This section does not preclude a person owing support from seeking a modification of the child support order pursuant to Section 3651, based on a change in circumstances or other appropriate reason.~~

~~(c) The court shall provide notice to the parties of the support obligation suspension provided in subdivision (a) at the time the order is issued or modified.~~

~~(d) Upon release from incarceration or involuntary institutionalization, an obligor may petition the court for an adjustment of the arrears pursuant to the suspension of the support obligation authorized in subdivision (b). The obligor must show proof of the dates of incarceration or involuntary institutionalization, as well as proof that, during that time, the obligor did not have the means to pay the support. The obligor shall serve copies of the petition to the support obligee and the~~

1 local child support agency, who may file an objection to the  
2 obligor's petition with the court. An obligor's arrears shall not be  
3 adjusted until the court has approved the petition.

4 (e) This section does not prohibit the local child support agency  
5 or child support obligee from petitioning a court for a determination  
6 of child support or arrears amounts under this section.

7 (f) For purposes of this section, the following definitions shall  
8 apply:

9 (1) "Incarcerated or involuntarily institutionalized" includes,  
10 but is not limited to, involuntary confinement to the state prison;  
11 a county jail, a juvenile facility operated by the Division of Juvenile  
12 Facilities in the Department of Corrections and Rehabilitation, or  
13 a mental health facility.

14 (2) "Suspend" means that the payment due on the current child  
15 support order, arrears payment on preexisting arrears balance, and  
16 interest on arrears created during qualifying periods of incarceration  
17 under this section is, by operation of law, set to zero dollars (\$0)  
18 for the period during which the person owing support is  
19 incarcerated or involuntarily institutionalized.

20 (g) This section applies as follows:

21 (1) To every money judgment or order for support of a child.

22 (2) If a local child support agency is enforcing the child support  
23 orders under Title IV-D of the Social Security Act (42 U.S.C. Sec.  
24 651 et seq.), this section applies to any of those orders and  
25 modifications issued on or after July 1, 2011.

26 (h) The Department of Child Support Services shall, by January  
27 1, 2020, and in consultation with the Judicial Council, develop  
28 forms to implement this section.

29 (i) This section shall become operative on January 1, 2020.

30 SEC. 4.

31 SEC. 3. This act is an urgency statute necessary for the  
32 immediate preservation of the public peace, health, or safety within  
33 the meaning of Article IV of the Constitution and shall go into  
34 immediate effect. The facts constituting the necessity are:

35 In order to avoid an *limit the duration of the* interruption in the  
36 protections provided by Section 4007.5 of the Family Code, it is  
37 necessary that this bill take effect immediately.